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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

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**Final Rule**

LSA Document #12-512(F)

**DIGEST**

Amends [327 IAC 2-1.5-17](#) concerning the variance from the water quality standard for chloride granted to the City of Angola being appended to [327 IAC 2-1.5-17](#) in accord with [327 IAC 5-3-4.1](#)(m). Effective 30 days after filing with the Publisher.

**HISTORY**

Findings and Determination of the Commissioner Pursuant to [IC 13-14-9-7](#) and Second Notice of Comment Period: September 12, 2012, Indiana Register (DIN: [20120912-IR-327120512FDA](#)).

Notice of Public Hearing: September 12, 2012, Indiana Register (DIN: [20120912-IR-327120512PHA](#)).

Date of First Public Hearing: November 14, 2012.

Proposed Rule: January 23, 2013, Indiana Register (DIN: [20130123-IR-327120512PRA](#)).

Notice of Public Hearing: January 23, 2013, Indiana Register (DIN: [20130123-IR-327120512PHA](#)).

Date of Second Public Hearing: March 13, 2013.

**[327 IAC 2-1.5-17](#)**

SECTION 1. [327 IAC 2-1.5-17](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 2-1.5-17](#) Variances from water quality standards for point sources**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 4-22-2](#); [IC 13-11-2-24](#); [IC 13-13-5](#); [IC 13-18-4](#); [IC 13-18-7](#); [IC 13-23-13](#); [IC 13-24-1](#); [IC 13-25-5](#); [IC 13-30-2-1](#)

Sec. 17. (a) A permit applicant or permittee may apply to the commissioner for a variance from the water quality standard used to derive a water quality-based effluent limitation (WQBEL) contained in a NPDES permit for a specific substance. The application for such a variance shall be submitted in accordance with [327 IAC 5-3-4.1](#). The following do not constitute an undue hardship or burden. Therefore, a variance to a water quality standard shall not be granted:

- (1) that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical habitat;
- (2) if standards will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Clean Water Act (CWA) and by the permittee implementing cost-effective and reasonable best management practices for nonpoint source control at the facility; or
- (3) to recommending dischargers or new Great Lakes dischargers, unless the new Great Lakes discharge occurs as the result of:
  - (A) a response action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended (as defined in [IC 13-11-2-24](#));
  - (B) a corrective action pursuant to the Resource Conservation and Recovery Act (RCRA), as amended (as defined in [IC 13-13-5](#)); or
  - (C) an action pursuant to similar federal or state authorities, including, but not limited to:
    - (i) an underground storage tank (UST) corrective action under [IC 13-23-13](#);
    - (ii) a remediation of petroleum releases under [IC 13-24-1](#);
    - (iii) a voluntary remediation under [IC 13-25-5](#); or
    - (iv) an abatement or correction of any polluted condition under [IC 13-18-7](#).

(b) The commissioner may approve all or part of a requested variance, or modify and approve a requested variance, if the permit applicant demonstrates that implementing a proposed methodology, that includes any production processes, wastewater treatment technology, or combination thereof used to reduce pollutants discharged in the wastewater from a facility, as identified under [327 IAC 5-3-4.1](#)(b)(2)(A), will cause an undue hardship or burden upon the applicant.

(c) In making a determination on a variance application, the commissioner shall balance the increased risk to

human health and the environment if the variance is granted against the hardship or burden upon the applicant if the variance is not granted so that the commissioner is able to conclude that any increased risk is consistent with the protection of the public health, safety, and welfare. In balancing these factors, the commissioner shall consider the following to determine if the hardship or burden upon the applicant is undue:

(1) For variance applications, except those governed under subdivision (2), the following shall be considered:

- (A) The cost and cost effectiveness of pollutant removal by implementing the methodologies proposed by the applicant and the methodology capable of attaining the WQBEL.
- (B) The reduction in concentrations and loadings of pollutants attainable by the methodologies proposed by the applicant as compared with the reduction attainable by use of the methodology capable of attaining the WQBEL.
- (C) The impact of the proposed methodologies and the methodology capable of attaining the WQBEL on the price of the goods or services provided by the applicant.
- (D) Information on the relative price of goods or services in the same market as the applicant.
- (E) The overall impact of attaining the WQBEL and implementing the proposed methodologies on employment at the facility.
- (F) Information on the type and magnitude of adverse or beneficial environmental impacts, including the net impact on the receiving water, resulting from the proposed methodologies that could be applied to the control of the substance for which a variance is applied. This information shall include the extent of any increased risk to human health and the environment associated with each of the proposed methodologies.
- (G) Other relevant information requested by the commissioner or supplied by the applicant or the public.

(2) For variance applications where the necessity for the variance is a short-term, temporary discharge resulting from the dredging of contaminated sediments from a waterbody and is conducted under any of the federal or state authorities listed under subsection (a)(3), the following shall be considered:

- (A) The cost and cost effectiveness of pollutant removal by implementing the methodologies proposed by the applicant and the methodology capable of attaining the WQBEL.
- (B) The reduction in concentrations and loadings of pollutants attainable by the methodologies proposed by the applicant as compared with the reduction attainable by use of the methodology capable of attaining the WQBEL.
- (C) Information on the type and magnitude of adverse or beneficial environmental impacts, including the net impact on the receiving water, resulting from the proposed methodologies that could be applied to the control of the substance for which a variance is applied. This information shall include the extent of any increased risk to human health and the environment associated with each of the proposed methodologies. In considering the information required by this clause, the commissioner shall also consider that the action is the following:
  - (i) For the protection, maintenance, or restoration of the environment.
  - (ii) Short-term and temporary.
- (D) Other relevant information requested by the commissioner or supplied by the applicant or the public.

(d) The commissioner may grant the variance when the requirements of subsections (b) and (c) are met.

(e) A determination to grant or deny a requested variance shall be made in accordance with [327 IAC 5-3-4.1](#). In making this determination, the commissioner may also consider other information available to the agency or supplied by the applicant or the public.

(f) A variance applies only to the permit applicant requesting the variance and only to the substance specified in the variance application. The granting of a variance does not imply or require that the water quality standard corresponding to the variance be modified through a rulemaking in accordance with [IC 4-22-2](#) and [IC 13-14-9](#).

(g) A variance or any renewal thereof shall not be granted for a term greater than that allowed by [IC 13-14-8](#). Notwithstanding the time at which the application for a variance is submitted under [327 IAC 5-3-4.1](#), a variance shall not be granted for a term greater than the term remaining under the permit to which the variance is attached.

(h) Neither the filing of a variance application nor the granting of a variance shall be grounds for the staying or dismissing of or a defense in a pending enforcement action. A variance shall be prospective only.

**(i) The following variance from water quality standards found at section 8 of this rule has been granted:**

Table 17-1

## Variances from Water Quality Standards

Waterbody	Affected Discharger	Starting Location	Ending Location	Substance	Variance Limit (mg/L)
H.D. Wood Ditch and Mud Creek	IN0021296	Angola WWTP Outfall 001	Confluence with Pigeon Creek	Chloride	768 Monthly Average 1,056 Daily Maximum

(Water Pollution Control Division; [327 IAC 2-1.5-17](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1409; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Jun 14, 2013, 9:43 a.m.: [20130710-IR-327120512FRA](#))

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